No. 436

In the Supreme Court of the United States

OCTOBER TERM, 1943

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

JAMES V. REUTER, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONSE TO MOTION TO RECALL WRIT OF CERTIORARI

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The above case is pending in this Court upon a writ of certiorari granted November 22, 1943 (R. 35). On February 4, 1944, counsel for respondent filed a motion to recall the writ on the ground that after it issued, respondent, a Louisiana corporation, had been dissolved, thus rendering the case moot.

The Solicitor General, on behalf of petitioner, respectfully submits that the motion should be denied. The facts relied upon as grounds for such denial are contained in the printed record and in the annexed affidavit of Alexander E. Ral-

ston, Jr.[1] They are summarized below in connection with the argument in opposition to the motion.

QUESTION PRESENTED

The district court enjoined James V. Reuter, Inc. (a Louisiana corporation), its officers, and agents from violating the Fair Labor Standards Act. This judgment was reversed by the circuit court of appeals, and this Court granted certiorari. Subsequently James V. Reuter, Inc., was dissolved and its business continued by James V. Reuter, who had been the president and dominant stockholder of the corporation. The question is whether dissolution of the corporation requires the dismissal of the proceeding in this Court.

STATEMENT

This case arose on a complaint filed by the Administrator of the Wage and Hour Division, United States Department of Labor, against a Louisiana corporation, James V. Reuter, Inc., praying for an injunction restraining violations of the Fair Labor Standards Act[2] (R. 1–5). After trial the district court entered a judgment restraining "defendant, its agents, servants, employees and attorneys, and all persons acting or claiming to act in its behalf or interest" from

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[1] The original of this affidavit has been filed in the office of the Clerk. A copy is reprinted as an Appendix hereto, pp. 19–32, *infra*.

[2] Fair Labor Standards Act of 1938, c. 676, 52 Stat. 1060, 29 U. S. C. 201.

violating the minimum wage, overtime and record-keeping provisions of the Act (R. 23–24). The circuit court of appeals reversed this judgment, holding that many of respondent's employees were not covered by the Act (R. 27–33, 34). On the Administrator's petition this Court granted a writ of certiorari (R. 35).

Thereafter, on December 15, 1943, proceedings were initiated to liquidate and dissolve respondent (Affidavit, pp. 30–31, *infra*). Pursuant to the Louisiana corporation laws,[3] Mr. and Mrs. James V. Reuter and Mrs. Rosemary N. Burg, who represented that they were the sole shareholders,

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[3] Louisiana Act 250 of 1928. Section 54 of this act provides that the shareholders of the corporation may resolve that the affairs of the corporation be wound up out of court and may name a liquidator. Under Section 57, unless restrained in the appointment, the liquidator has full power to collect assets, ascertain and settle liabilities, sue and defend suits and make distribution of the net assets. Under Section 61 (II) the liquidator supersedes the directors in their powers and duties. During the liquidation, however, the corporation remains in existence and retains title to all of its assets. In winding up the business, among the duties of the liquidator is that of "prosecuting, defending, or comprising * * * all litigation pending in which the corporation is a party." *McCoy* v. *State Line Oil and Gas Co.*, 180 La. 579, 585, 157 So. 116, 118. Section 62 of the act declares that when the "corporation has been completely wound up," the "liquidator * * * shall sign and acknowledge a certificate stating that the corporation has been completely wound up and is dissolved." This certificate must be delivered to the Secretary of State who files it in his office; "thereupon the corporate existence shall terminate and the Secretary of State shall issue a certificate of dissolution" to be recorded in the parish where the corporation does business.

consented to the liquidation of respondent and appointed James V. Reuter liquidator (*id.*, pp. 21, 30, *infra*). At this time Reuter held a majority of the shares (Affidavit, p. 19, *infra*). On December 16 (the next day) Reuter certified that he had wound up the corporation and it was dissolved (Motion, p. 14).[4] According to counsel's statement, the "purpose of the dissolution of James V. Reuter, Inc. was to enable James V. Reuter to operate the corporate business as an individual and thereby to avoid corporate taxes" (Affidavit, p. 19, *infra*). After the dissolution Reuter did, in fact, operate the same business at the same place employing the same employees (*id.*, p. 20, *infra*).

The record does not show directly how far the corporation was dominated by Reuter during the period in which the alleged violations of the Fair Labor Standards Act occurred but there are several additional facts from which inferences may be drawn. James V. Reuter, Inc. was incorporated in 1935 (*id.*, pp. 22–27, *infra*). James V. Reuter was one of the three ~~original incorpo-~~

[4] The certificate appears to have been made improperly. One of the duties of a liquidator under Louisiana law is to prosecute, defend or compromise all litigation against the corporation and until that is done the certificate of dissolution should not be made. The pendency of this case itself makes Reuter's certificate inaccurate. Hence, if this were a case in the Louisiana courts, petitioner could on motion have respondent's dissolution set aside. *McCoy* v. *State Line Oil and Gas Co.*, *supra*.

rators and directors and one of the three shareholders (*ibid.*). He and Mrs. Reuter were named as the registered agents (*id.*, p. 24, *infra*). A report of an increase of capital stock, recorded in 1936, shows that at that time Reuter was president, and Mrs. Reuter secretary, of the corporation (*id.*, pp. 28–29, *infra*). When the corporation was dissolved, Reuter was a majority stockholder; the only other stockholders were Mrs. Reuter and one of the original incorporators, Mrs. R. N. Burg (*id.*, pp. 19, 26. 30–31, *infra*). So that we might inform the Court both as to the proportion of the shares held by each of the three shareholders and as to the distribution of its assets made on dissolution, we requested Frank S. Normann, Esquire, counsel for James V. Reuter, Inc. and for James V. Reuter, to give us the necessary information. Mr. Normann, although he knows the facts, refused to disclose them (*id.*, pp. 19, 22, *infra*).

ARGUMENT

Under the Louisiana corporation law respondent no longer exists, even for purposes of suit. Counsel for respondent urges that this dissolution requires that the present case be dismissed, first, on the ground that the case is now moot because the Court cannot give any effectual relief; and second, on the ground that the dissolution abates all litigation against respondent. In our view both contentions lack merit. As to the first, we submit that the injunction decree, which would

be reinstated by this Court upon reversal of the judgment of the circuit court of appeals, would bind Reuter individually while he is carrying on the business, and that, therefore, a controversy exists in which effectual relief may be granted (pp. 7–14, *infra*). As to the second contention, although it is true that dissolution of a corporation abates all proceedings against it if no judgment has been entered, nevertheless the dissolution does not abate appellate proceedings following a judgment in the trial court against the corporation (pp. 14–17, *infra*).

Since the judgment in the case will affect Reuter individually, and since the dissolution of respondent prevents him from speaking through it as a party, it would seem appropriate that he be made a party in this Court in order to defend his interests. This could be accomplished by substitution in a manner similar to that provided for in Rule 19. Compare also Federal Rule of Civil Procedure 25. For the reasons we have stated and discuss below, the substitution is unnecessary to the continuation of the case and therefore we see no reason for substituting Reuter against his will. If, however, Reuter should ask to be substituted we should not oppose the motion; on the contrary, we believe that the Court should grant it. Cf. *Federal Trade Comm.* v. *Standard Education Society*, 302 U. S. 112.

I

THE INJUNCTION ENTERED BY THE DISTRICT COURT, IF REINSTATED, WILL BIND REUTER INDIVIDUALLY WHILE HE CONTINUES THE BUSINESS

The facts set forth above (pp. 2–5, *supra*) make it plain that the business of the corporation James V. Reuter, Inc., was in substance the business of James V. Reuter the individual. Certainly, it is a fair inference that he controlled the stock and dominated the corporate activities. In the first place, the distribution of the stock and of the corporate offices is typical of a "one man" or "family" corporation. Reuter and his wife were two of the three stockholders and were the president and secretary of the corporation and its registered agents. Reuter also became its liquidator. Second, the speed and ease with which the liquidation was accomplished and the business turned over to Reuter to operate indicate that he had always had complete control. Third, the decision to dissolve respondent was made to advance Reuter's business interests. According to counsel, "the purpose of the dissolution of James V. Reuter, Inc., was to enable James V. Reuter to operate the corporate business as an individual and thereby to avoid corporate taxes" (Affidavit, p. 19, *infra*). If other stockholders had had a real interest in the business, something more than Reuter' tax advantage would have required consideration. Fourth, counsel for respondent and

for Reuter has refused to furnish information showing how the corporate shares were divided among the three shareholders and how its assets were distributed upon liquidation. This information, particularly if put in form to show the actual beneficial ownership and control and not just the legal holdings, would be very material. As long as it is withheld, the inference is justified that the information would be damaging to respondent's contentions (cf. *Interstate Circuit* v. *United States*, 306 U. S. 208, 225–226), and, in conjunction with the other facts noted, any failure to give it to the Court compels the conclusion that the dissolution of respondent was a change of form and not of substance—in other words, that there is "merely a disguised continuance of the old employer" (*Southport Petroleum Co.* v. *National Labor Relations Board*, 315 U. S. 100, 106).

Under these circumstances Reuter is bound by the injunction decree entered against the corporation. The injunction runs against "defendant, its agents, servants, employees and attorneys, and all persons acting or claiming to act in its behalf" (R. 23). Ordinarily, corporate officers and agents are bound only to take proper steps to bring about compliance by the corporation and are not bound by an injunction in their individual capacity unless they are otherwise in contempt. *Parker* v. *United States*, 126 F. (2d) 370, 379 (C. C. A. 1); *Harvey* v. *Bettis*, 35 F. (2d) 349, 350 (C. C. A.

9). "It is an established exception to this rule, however, that an equity court will not permit changes in the form of a corporate or individual enterprise to be used to frustrate its decrees. An individual cannot escape an injunction against him arising out of his business activities by forming a corporation to carry on the business. *Bernard* v. *Frank*, 179 Fed. 516 (C. C. A. 2); cf. *Frank F. Smith Metal Window Hardware Co.* v. *Yates*, 244 Fed. 793 (C. C. A. 2); *A. B. Dick Co.* v. *Marr*, 48 F. Supp. 775 (S. D. N. Y.). Likewise, a decree against one corporation will bind a second corporation which has substantially the same officers and stockholders and succeeds to the business of the first. *Campbell* v. *Magnet Light Co.*, 175 Fed. 117 (C. C. N. Y.); *Farmers' Fertilizer Co.* v. *Ruh*, 7 Oh. App. 430; *Sperry & Hutchinson Co.* v. *McKelvey Hughes Co.*, 64 Pa. Super. 57; cf. *Iowa Barb Steel Wire Co.* v. *Southern Barbed-Wire Co.*, 30 Fed. 123 (C. C. Mo.). And where an individual is not merely an officer or employee but dominates the activities of a corporation against which an injunction is issued, he does not escape the injunction by carrying on the enterprise as an individual. Compare *Donaldson* v. *Roksament Stone Co.*, 178 Fed. 103 (C. C. N. Y.) (mere employee not bound) with *Donaldson* v. *Roksament Stone Co.*, 176 Fed. 368 (C. C. N. Y.) (president and principal figure in corporation bound while carrying on same business as an

individual); *Katenkamp* v. *Superior Court*, 16 Cal. (2d) 696; cf. *Mayor* v. *New York Ferry Co.*, 64 N. Y. 622. In all such cases, of course, it is immaterial whether the successor to the enterprise was a party to the original litigation or named in the decree. See also *In re Lennon*, 166 U. S. 548; *Bessette* v. *Conkey*, 194 U. S. 324.

These principles, as the cited cases show, have been invoked most frequently in patent litigation. The same principles, however, have been applied in other fields of law and neither reason nor authority suggests that their usefulness as a means of securing justice is limited to any particular class of cases. E. g., *Jewelers Assn.* v. *Rothschild*, 39 N. Y. Supp. 700; *Farmers' Fertilizer Co.* v. *Ruh, supra; Sperry & Hutchinson Co.* v. *McKelvey Hughes Co., supra; Katenkamp* v. *Superior Court, supra;* cf. *Cantrell & Cochrane Ltd.* v. *Witteman*, 180 Fed. 794 (C. C. N. Y.); *Avery* v. *Andrews*, 51 L. J. R. 414.[5] They are not only applicable but should be given broad scope in enforcing decrees under remedial statutes regulating the employment relationship (the National Labor Relations Act and the Fair Labor Standards Act, for example), for such legislation is concerned not so much with private rights as

[5] In the case last cited the court said, "If anybody, though not a person actually named in the injunction, chooses to step into the place of a man who was named, and to do the act which he was enjoined from doing, he has committed a very gross contempt of this court."

with relationships between employees and the business unit in which they are employed. "It is the employing industry that is sought to be regulated and brought within the corrective and remedial provisions of the Act in the interest of industrial peace" (*National Labor Relations Board* v. *Colten*, 105 F. (2d) 179, 183 (C. C. A. 6)).

The rule for which we contend has already been invoked by this Court in a comparable situation. The decision in *Southport Petroleum Corp.* v. *National Labor Relations Board*, 315 U. S. 100, shows clearly that Reuter is bound by the decree against his corporation. In that case evidence was offered to show that a corporation had been dissolved after it was ordered to reinstate certain employees discharged in violation of the National Labor Relations Act, and its business transferred to another corporation. This Court held (p. 106):

> If there was merely a change in name or in apparent control there is no reason to grant the petitioner relief from the Board's order of reinstatement; instead there is added ground for compelling obedience. Whether there was a *bona fide* discontinuance and a true change of ownership—which would terminate the duty of reinstatement created by the Board's order—or merely a disguised continuance of the old employer, does not clearly appear, and accordingly is a question of fact properly

to be resolved by the Board on direct resort to it, or by the court if contempt proceedings are instituted.

See also *National Labor Relations Board* v. *Hopwood Retinning Co.*, 104 F. (2d) 302 (C. C. A. 2).

The cases cited by counsel for respondent are distinguishable. *United States* v. *Hamburg-American S. S. Co.*, 239 U. S. 466, arose out of a suit to restrain violations of the anti-trust laws by an international steamship cartel; the outbreak of war rendered the case moot because continuation of the combination under war conditions was impossible. *Mills* v. *Green*, 159 U. S. 651, was held to involve a moot case because the purpose of plaintiff's suit was to establish his right to vote in an election and the election had already been held. In those cases "the intervening event is owing * * * to a power beyond the control of either party" (*Hamburg American* case, p. 477), or there was nothing upon which the judgment could operate (cf. *St. Pierre* v. *United States*, 319 U. S. 41). Neither of these factors is present here, inasmuch as the dissolution can hardly be said to have been caused by matters beyond respondent's control and the judgment can still be operative as against the business conducted by Reuter.

We submit, therefore, that on the facts which now appear, Reuter would be bound by the injunction if the decree of the circuit court of appeals were reversed; it follows that this Court

can grant effectual relief. Even if the factual issue of Reuter's relationship to respondent be thought doubtful, the doubt should be resolved in favor of continuation of the case. In the first place, if parties may successfully escape from the effect of adverse decisions, or avoid the reversal of favorable ones on appeal, by changing the form of their business, as was done here, effective law enforcement will be greatly impeded; the Government might be compelled to bring action after action in order to follow an elusive defendant from one form of enterprise to another. In dealing with a similar problem, this Court declared in *United States* v. *Trans-Missouri Freight Association,* 166 U. S. 290, 309:

> If the mere dissolution of the association worked an abatement of the suit as to all the defendants, as is the claim made on their part, it is plain that they have thus discovered an effectual means to prevent the judgment of this court being given upon the question really involved in the case. The defendants having succeeded in the court below, it would only be necessary thereafter to dissolve their association and instantly form another of a similar kind, and the fact of the dissolution would prevent an appeal to this court or procure its dismissal if taken. This result does not and ought not to follow.

See also to the same effect *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission,*

219 U. S. 498, 514–516. In addition, a decision on the merits will not be a nullity, since it will in practical effect at least determine the rights of respondent's employees to recover for past violations under Section 16 (b) of the Act.[6] See *Southern Pacific Co.* v. *Interstate Commerce Commission*, 219 U. S. 433, 452, in which the possible liability of railroads for reparations was held to warrant review of an expired Interstate Commerce Commission order.

II

THE DISSOLUTION OF RESPONDENT DOES NOT ABATE THE APPELLATE PROCEEDING IN THIS COURT

At common law the dissolution of a corporation before judgment, like the death of a natural person, abates the action against it. *Mumma* v. *Potomac Co.*, 8 Pet. 280; *Pelican Oil & Gasoline Co.* v. *Commissioner*, 128 F. (2d) 561 (C. C. A. 5). For example, in *First National Bank of Selma* v. *Colby*, 21 Wall. 609, cited in the motion, it appeared that the corporate defendant had been dissolved almost two years before trial, and it was held that the action abated.[7]

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[6] The employee's right to recovery for unpaid wages due under the Act remains in existence against the stockholders of the dissolved corporation. *Ortego* v. *Nehi Bottling Works*, 182 So. 365 (1938); *Stock* v. *E. A. Fabacher, Inc.*, 185 So. 48 (1938).

[7] In *Oklahoma Natural Gas Co.* v. *Oklahoma*, 273 U. S. 257, the Court said without qualification: "as the death of a natural person abates all pending litigation to which such

But this rule does not apply to appellate proceedings after a judgment for the plaintiff. Even a cause of action for tort becomes merged in the judgment and takes on the aspects of a property right which may be enforced, in the case of an individual, against his estate. Hence, it is settled that the death of a natural person does not abate appellate proceedings which may result in affirmance of a judgment rendered during his life. *Coughlin* v. *District of Columbia,* 106 U. S. 7; *Bell* v. *Bell,* 181 U. S. 175; *Castelluccio* v. *Cloverdale Dairy Products Co.,* 165 La. 606; Note, 62 A. L. R. 1048, and cases cited. For like reasons dissolution of a corporation after judgment against it does not abate the proceedings on appeal. In *Knickerbocker Life Ins. Co.* v. *Pendleton,* 112 U. S. 696, affirmed on rehearing, 115 U. S. 339, this Court reviewed on writ of error a judgment against an insurance company which was dissolved during the proceedings on the writ. In *Pendleton* v. *Russell,* 144 U. S. 640,

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person is a party, dissolution of a corporation abates all litigation to which the corporation is appearing either as plaintiff or defendant." Although counsel for respondent relies upon this statement to support his motion, it is apparent for two reasons that the Court was speaking only of litigation in the trial courts. In the first place the opinion speaks of the dissolution of a corporation as having the same effect as the death of a natural person; it is clear that death does not abate an appeal. See pp. 15–16, *infra.* Secondly, the Court cited *Pendleton* v. *Russel,* 144 U. S. 640, as authority; that very case holds that dissolution of a corporation after a judgment against it does not abate a writ of error or appeal. *Ibid.*

at another stage in the same litigation, the Court noted that the dissolution had not abated the previous appellate proceedings, saying (p. 646)—

> Had the original judgment * * * been affirmed, instead of being reversed, it having been rendered when the insurance company was in existence, it would have stood as a valid claim against the assets of that company after its dissolution.

See also *Rider* v. *Union Factory,* 30 Am. Dec. 495 (Va.); *May* v. *State Bank,* 2 Rob. (Va.) 56.

It makes no difference that in the instant case the judgment of the district court had been reversed by an intermediate appellate court. The reversal did not entirely destroy the judgment. The statutes give opportunity for further review and during that period the judgment retains sufficient potential existence to keep the proceedings alive. *Coughlin* v. *District of Columbia,* 106 U. S. 7, is directly in point. See also *Carr* v. *Rischer,* 119 N. Y. 117 (1890); *Ellis* v. *Brooks,* 101 Tex. 591, 102 S. W. 94, 103 S. W. 1196 (1908); *Lewis* v. *St. Louis & I. M. R. Co.,* 59 Mo. 495 (1875); *Lew* v. *Lee* [1924] S. C. R. (Can.) 612, [1925] 1 D. L. R. 179; Note, 62 A. L. R. 1048, 1051–1053.

The instant case, it is true, does not involve a money judgment enforceable against the corporate property, such as is involved in the precedents

upon which we rely, but the difference is immaterial. The decisions cited show that no defect of parties exists which would require abatement of the suit, and the injunction decree, although it can no longer affect the corporation, will, if reinstated, effectively bind Reuter himself (see pp. 7–14, *supra*).

There is an added reason for applying these principles to the instant case. Reuter has taken over the business of the corporation while the litigation is pending and with knowledge that the decree of the circuit court of appeals might be reversed by this Court. In *G. & C. Merriam Co.* v. *Saalfield,* 190 Fed. 927 (C. C. A. 6), the defendant, previously a stranger to the enterprise, took over a corporation's business during trade-mark litigation against it and was held bound by the decree although he was not a party to the original suit. The court's reasoning applies *a fortiori* to a case such as this, in which the successor also dominated the old business. "If a third party may thus come into acquisition of rights involved in pending litigation without being bound by the final judgment, and require a suit de novo in order to bind him, he might, pending that suit, alienate that right to another with the same result, and a final decree bearing fruit could never be reached" (p. 932).

CONCLUSION

It is respectfully submitted that the motion to recall the writ of certiorari should be denied.

CHARLES FAHY,
Solicitor General.

DOUGLAS B. MACGS,
Solicitor of Labor.

FEBRUARY 1944.

APPENDIX

AFFIDAVIT OF ALEXANDER E. RALSTON, JR.

CITY OF BIRMINGHAM,
Jefferson County, State of Alabama, ss:

BEFORE ME, the undersigned authority, a Notary Public in and for the County and State aforesaid, duly qualified and commissioned, personally came and appeared:

ALEXANDER E. RALSTON, JR., a person of the full age of majority and presently residing in the aforesaid City, County and State and domiciled in the Parish of Orleans, State of Louisiana, who being by me first duly sworn did depose and say, that:

He is an Associate Attorney in the Office of Solicitor, United States Department of Labor, with his official station at New Orleans, Louisiana.

Affiant, on January 19, 1944, was informed by Frank S. Normann, counsel for James V. Reuter and for the corporation James V. Reuter, Inc., that James V. Reuter owned a majority of the stock in James V. Reuter, Inc., at the time of its dissolution on December 31, 1943, and that the purpose of the dissolution of James V. Reuter, Inc., was to enable James V. Reuter to operate the corporate business as an individual and thereby to avoid corporate taxes. Mr. Normann is also counsel of record for James V. Reuter, Inc. in the cause now pending in the Supreme Court of the United States entitled "L. Metcalfe Walling v. James V. Reuter, Inc."

Affiant was further informed by Mr. Normann that, upon the dissolution of James V. Reuter, Inc., James V. Reuter, as individual proprietor, continued the operation of the said corporation's wholesale fruit and vegetable business without change in manner or place of doing business.

Affiant was further advised by Mr. Normann that, to his knowledge, James V. Reuter, in continuing the operation of the said business, retained the same employees who had been employed by James V. Reuter, Inc.

Affiant, on January 18, 1944, visited the premises at 817 Decatur Street, New Orleans, Louisiana, where the business of James V. Reuter, Inc. had been conducted and observed a freshly painted sign attached to the building and upon which appeared the name "James V. Reuter." James V. Reuter was present in the building and stated to affiant that he is now operating the business as an individual.

Affiant has personally examined all official records pertaining to James V. Reuter, Inc., filed in the Office of the Recorder of Mortgages for the Parish of Orleans.

Affiant, in his examination of the aforesaid official records, found a record of the charter of James V. Reuter, Inc., recorded on July 26, 1935 in Mortgage Office Book 1493, Folio 494, in which James V. Reuter appeared as one of three original incorporators and directors and in which James V. Reuter and Mrs. James V. Reuter were named as registered agents. A certified copy of this record is annexed hereto and made a part hereof as the best evidence of its contents and

has been signed by affiant for identification with this affidavit.

Affiant, in his examination of the aforesaid official records, found a record of the "Report of Stock of James V. Reuter, Inc." recorded on September 25, 1936, in Mortgage Office, Book 1509, Folio 408, in which James V. Reuter appeared as president of the said corporation and Mrs. Clara Dietrich Reuter appeared as its secretary and which was signed by James V. Reuter, President of James V. Reuter, Inc. and Mrs. James V. Reuter, Secretary of James V. Reuter, Inc. A certified copy of this record is annexed hereto and made a part hereof as the best evidence of its contents and has been signed by affiant for identification with this affidavit.

Affiant, in his examination of the aforesaid official records, found a record of the "Consent to Dissolution of James V. Reuter, Inc." recorded on December 16, 1943, in Mortgage Book, Book 1666, Folio 46, in which James V. Reuter, Clara D. Reuter, and R. N. Burg appeared and stated that "they are the sole and only shareholders of all the outstanding shares of stock in James V. Reuter, Inc." This affidavit is signed by James V. Reuter, Clara D. Reuter and R. N. Burg. A certified copy of this record is annexed hereto and made a part hereof as the best evidence of its contents and is signed by affiant for identification with this affidavit.

Affiant, in his examination of the aforesaid official record, was unable to find any record specifying the number of shares held by James V. Reuter, Clara D. Reuter, and R. N. Burg, respectively, of the stock of James V. Reuter,

Inc., nor was affiant able to find any record specifying the nature and amount of the property distributed to each of these individuals upon the liquidation of James V. Reuter, Inc. Affiant is familiar with the Louisiana laws pertaining to the filing and recording of corporation records and believes there is no other office in which such information has been filed for public record.

To the knowledge of affiant, this information concerning the distribution of shares in James V. Reuter, Inc. among its three stockholders and showing the manner in which its assets were distributed upon liquidation can be supplied by James V. Reuter or by his attorney, the aforesaid Frank S. Normann. Affiant, on February 8, 1944, requested Mr. Normann to furnish him with this information; Mr. Normann refused this request.

(Sgd.) ALEXANDER E. RALSTON, Jr.

Sworn to and subscribed before me this 14th day of February, 1944.

ESTHER ANNIE TEMERSON,
Notary Public.

[SEAL] Comm. expires 10–31–46.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans.

BE IT KNOWN, that on this 24th day of the month of July, in the year of our Lord one thousand nine hundred and thirty-five, and of the Independence of the United States of America, the one hundred and Sixtieth.

Before me, Frank S. Normann, A Notary Public, duly commissioned and qualified in and for the

Parish of Orleans, State of Louisiana, and therein residing, personally came and appeared the several subscribers hereto, all of the full age of majority, who declared to me, Notary, in the presence of the undersigned competent witnesses, residing in the State and Parish aforesaid, availing themselves of the provisions of Act No. 250 of the Louisiana Legislature of 1928, they do hereby organize themselves, their successors and assigns, into a corporation, pursuant to said Act under and in accordance with the following Articles of Incorporation:

ARTICLE I

The name and title of this corporation is "James V. Reuter, Inc."

ARTICLE II

The objects and purposes for which this corporation is organized and the nature of the business or businesses to be carried on by it, are stated and declared to be as follows, namely:

(a) To operate and carry on the businesses of a wholesale or retail dealer in groceries, vegetables, produce, poultry, eggs and dairy products, of every description whatsoever.

(b) To buy and sell, either outright or on commission or consignment, groceries, vegetables, produce, poultry, eggs and dairy products, of every description whatsoever.

(c) To act as agent, factor or commission merchant, relative to the purchase and sale by others of groceries, vegetables, produce, poultry, eggs and dairy products, of every description whatsoever.

(d) To purchase, lease, or otherwise acquire, land, buildings, and warehouses, whether in Louisiana or elsewhere, and whether necessary for the conduct of its businesses or otherwise.

(e) To have offices and warehouses, conduct the businesses and promote its objects within and without the State of Louisiana, in other States or in foreign countries, without restriction or amount.

ARTICLE III

The duration of this corporation shall be ninety-nine (99) years from the date hereof.

ARTICLE IV

The location and post office address of this corporation is No. 817 Decatur Street, New Orleans, Louisiana.

ARTICLE V

The full names and post office addresses of the registered agents of this corporation are:

(1) James V. Reuter, 2523 Esplanade Avenue, New Orleans, La.

(2) Mrs. James V. Reuter, 2523 Esplanade Avenue, New Orleans, La.

ARTICLE VI

The total authorized number of shares issued by this corporation is fifty (50) shares, each having a par value of One Hundred ($100.00) Dollars.

ARTICLE VII

The amount of paid-in capital with which this corporation shall begin business is Five Thousand

($5,000.00) Dollars, which, upon the execution of these articles has been paid in cash.

ARTICLE VIII

The names of the first Directors, their post-office addresses and the terms of office are as follows:

James V. Reuter, 2523 Esplanade Avenue, New Orleans, La.
Miss Sarah McQuillan, 1318 Eighth Street, New Orleans, La.
Mrs. Rosemary N. Burg, 2765 Gladiola Street, New Orleans, La.

The Directors named hereinabove shall hold office only until the election of their successors at the first general meeting of the shareholders of the corporation, or until such successors have qualified.

Unless and until otherwise provided in the by-laws, all of the corporate powers of this corporation shall be vested in, and the business and affairs of the corporation shall be managed by, a Board of three (3) Directors, who shall be elected by the shareholders at their annual meeting.

The general annual meeting of the shareholders for this election of Directors shall be held at the registered office of the corporation, and shall take place on the last Monday of July of each year, or the first business day thereafter when such day is a legal holiday, unless or until otherwise provided in the bylaws.

The Board of Directors shall have authority to make and alter bylaws, including the right to make or alter bylaws fixing their qualifications,

classification, or term of office, or fixing or increasing their compensation, subject to the powers of the shareholders to change or repeal the by-laws so made.

Any director absent from director's meeting may be represented by any other Director or shareholder, who may cast the vote of the absent Director, according to the written instructions, general or special, of said absent director, filed with the Secretary.

Article IX

The names and post-office addresses of the incorporators, and a statement of the numbers of shares subscribed by each, are as follows:

James V. Reuter, 2924 Esplanade Avenue, New Orleans, La., 1 share.
Miss Sarah McQuillan, 1318 Eighth Street, New Orleans, La., 25 shares.
Mrs. Rosemary N. Burg, 2765 Gladiola Street, New Orleans, La., 24 shares.

Article X

The meetings of the shareholders of this corporation shall be prescribed in the bylaws thereof.

Article XI

The corporation may purchase or redeem its own shares in the manner and under the conditions provided in Sections 23 and 45 of said Act No. 250 of 1928. Such shares so purchased shall be considered treasury shares, and may be reissued and disposed of as authorized by law, or may be cancelled and the capital stock reduced,

as the Board of Directors, may, from time to time, determine.

ARTICLE XII

This corporation claims, and shall have the benefit of the provisions of Section 63 of said Act No. 250 of 1928.

This done and signed in my office in the Parish and State aforesaid, on the day and year above written, in the presence of the undersigned competent witnesses and me, Notary, after due reading of the whole.

Witnesses:

HENRY G. McMAHON,
PAT MAUFFRAY.

(Signed) JAMES V. REUTER,
SARAH McQUILLAN,
ROSEMARY N. BURG.

(Sig.) FRANK S. NORMANN,
Notary Public.

New Orleans, Louisiana, July 26, 1935, 10.55 A. M. A. J. Mayer, Clk.

I hereby certify that this is a true and correct copy of the Charter of James V. Reuter, Inc., recorded in M. O. B. 1493, Folio 494.

[SEAL] A. L. ROLFES,
Dy. Recorder of Mortgages.

UNITED STATES OF AMERICA,
State of Louisiana,
Parish of Orleans, City of N. O.

Be it known, That on this 18th day of the month of September in the year of our Lord, One Thousand Nine Hundred and Thirty-Six:

Before me, Frank S. Normann, a Notary Public, duly commissioned and qualified in and for the Parish of Orleans, State of Louisiana, therein residing and in the presence of the witnesses hereinafter named and undersigned: Personally came and appeared James V. Reuter, President and Mrs. Clara Dietrich Reuter, Secretary to me personally known and known to me to be respectively the President and Secretary of James V. Reuter, Inc., a corporation created under the laws of this State and domiciled in this City, as fully appears by an act passed before the undersigned Notary dated the 24th day of July 1935 and duly recorded in the office of the Recorder of mortgages for the Parish of Orleans on July 26th, 1935 in book 1493, Folio 494 and filed and recorded in the office of the Secretary of State in Record of Charters, No. 151 on August 13th, 1935.

And the said appearers in their respective capacities declared that by virtue of and pursuant to a consent resolution of all of the shareholders of the said James V. Reuter, Inc., adopted at a meeting held at its domicile in this City on the 18th day of September 1936 all of the shareholders consented and unanimously resolved that the authorized capital stock of the Corporation be increased and that Article Six (6) of the Charter of James V. Reuter, Inc., be changed, modified and altered so as to hereafter read as follows:

ARTICLE 6

The total authorized number of shares is Two Hundred and Fifty (250) Shares each having a par value of One Hundred ($100.00) Dollars.

And the said appearers in their said capacities further declared that they were duly authorized by the aforesaid consent resolution a duplicate original of which is annexed hereto and made part hereof as though written herein in extenso, to take such steps and to do all things and execute any and all acts in writing on behalf of this corporation as might in their opinion be necessary or proper to legally and effectually carry out the action of the shareholders of this Corporation.

Therefore the said appearers have declared unto me, Notary in the presence of the undersigned witnesses, that Article Six, (6) of the charter of James V. Reuter, Inc., was and is hereby amended as aforesaid and that they desire to have this act in evidence thereof recorded according to law.

Thus done and passed in my office in said City of New Orleans on the day, month and year first above written in the presence of the two undersigned witnesses both of full age and residents of this Parish competent witnesses who have signed hereto with said appearers and me, Notary after due reading of the whole.

(Sgd.) JAMES V. REUTER,
President of James V. Reuter, Inc.,
(Sgd.) MRS. JAMES V. REUTER,
Secretary of James V. Reuter, Inc.

Witnesses:
(Sgd.) IRENE M. DOIZE,
(Sgd.) HORACE M. ROUCHELL.

(Sgd.) F. NORMANN, *N. P.*

New Orleans, La., September 25, 1936, 10:50 A. M., R. McFeely, Clerk.

I hereby certify that this is a true and correct copy of the Report of Stock of JAMES V. REUTER, INC., recorded in M. O. B. 1509, Folio 408.

[SEAL] A. L. ROLFES,
Dy. Recorder of Mortgages.

CONSENT OF SHAREHOLDERS FOR DISSOLUTION OF CORPORATION

We, the undersigned Shareholders of James V. Reuter, Inc., hereby consent to the immediate voluntary Dissolution out of Court of James V. Reuter, Inc., and do hereby appoint James V. Reuter, #817 Decatur Street, New Orleans, Louisiana, as Liquidator thereof with full power and authority to Liquidate and Dissolve said Corporation and without Bond.

Thus Done and Signed at New Orleans, La., on this the 15th day of December 1943.

(Sgd.) JAMES V. REUTER,
Shareholder,

(Sgd.) CLARA D. REUTER,
Shareholder,

(Sgd.) R. N. BURG,
Shareholder.

STATE OF LOUISIANA,
Parish of Orleans, ss:

Before me, the undersigned authority, personally came and appeared James V. Reuter, Clara D. Reuter, R. N. Burg, who after being duly sworn by me, Notary, did depose and say that they are the sole and only Shareholders of all the outstanding Shares of Stock in James V. Reuter, Inc., that they are the same persons whose Signature appear in the foregoing consent, and

that they have executed same in their capacity as Shareholders of James V. Reuter, Inc.

(Sgd.) JAMES V. REUTER.
(Sgd.) CLARA D. REUTER.
(Sgd.) R. N. BURG.

Sworn and subscribed to before me, this 15th day of December, 1943.

(Sgd.) F. N. NORMANN,
Notary Public.

New Orleans, Louisiana, December 16th 1943 @ 12.45 P. M. Wm. Hecker, Clerk.

I hereby certify that this is a true and correct copy of the Consent to Dissolution of James V. Reuter, Inc., recorded in M. O. B. 1666, Folio 46.

[SEAL] A. L. ROLFES,
Dy. Recorder of Mortgages.

STATE OF LOUISIANA.

I, the undersigned Assistant Secretary of State, of the State of La., do hereby certify that consent to dissolve James V. Reuter Inc, domiciled at N. O. LA., and the appointment of James V. Reuter, 817 Decatur St. N. O., signed and acknowledged by the Stockholders before a N. P. on the fifteenth day of December 1943, with proof of publication of notice of dissolution as required by Section 54 of Act 250 of 1928, as amended by Act 65 of 1932, and certificate of the Liquidator showing that the affairs of the Corp, have been completely wound up & dissolved, in compliance with Section 62 of Act 250 of 1928, as amended acknowledged before a N. P. on the seventeenth day of December, 1943, have been filed in this office on this the thirty-first day of December,

1943, recorded in Book "Record of Charters" No. 184. Folio—and the Corporation stands dissolved.

Given under my signature authenticated with the impress of my seal of office at the City of Baton Rouge this 31st day of Dec. A. D. 1943.

(Sgd.) H. C. COMISH,
Assistant Secretary of State.

New Orleans La., January, 10th, 1944 at 3:10 P. M. Wm. Hecker, Clk.

I hereby certify that this is a true and correct copy of the Certificate of Dissolution of James V. Reuter, Inc., recorded in M. O. B. 1658, Folio 304.

[SEAL] A. L. ROLFES,
Dy. Recorder of Mortgages.

U. S. GOVERNMENT PRINTING OFFICE: 1944